

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 9, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No: 06HD-234
Hawaii

Rescind Prior Board Action of May 11, 2007, (Item D-7), Quitclaim of State's
Interests, if Any, in Former Road Right-of-way to the County of Hawaii, Kailua-
Kona, North Kona, Hawaii, TMK: 3rd/7-5-22:175

BACKGROUND:

The subject remnant roadway was created with the adjacent subdivision in the 1950's. At that time, although the County was responsible for approving subdivisions, the Territory of Hawaii was the only legal entity that could receive conveyance of roads. For some reason, this remnant area was created as part of the County-approved subdivision roadways, but was not constructed and conveyed by a separate document to the Territory of Hawaii. At the time the quitclaim request was made, the County of Hawaii was leasing offices in the adjacent building on private land and required additional parking in the subject remnant. In addition, the County installed a sewer line within the subject remnant property without having completed the easement process. At one point, the County had considered leasing the subject property from the State on a month-to-month basis.

As a means of resolving all these issues, it was recommended that the State convey the subject remnant to the county through the quitclaim process. The County of Hawaii was in agreement with this course of action and the Board approved the quitclaim on May 11, 2007 under agenda item D-7 (Exhibit A).

REMARKS:

As a condition to the quitclaim, staff had requested the County provide survey maps and descriptions of the remnant. In a letter to the County Department of Public Works dated February 18, 2010, staff had asked for a status update on the requested maps. Subsequently, in a letter dated February 25, 2010, the County of Hawaii, through its Finance Department, has informed the State that it is rescinding its request to acquire the remnant lands (Exhibit B)

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of May 11, 2007, under agenda item D-7, quitclaim of State's interests, if any, in former road right-of-way to the County of Hawaii.

Respectfully Submitted,



Gordon C. Heit
Land Agent



APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



EXHIBIT "A"

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 11, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 06HD-234

Island of Hawaii

Quitclaim of State's Interests, if Any, in Former Road Right-of-Way to the County
of Hawaii, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 3rd/ 7-5-22:175

APPLICANT:

County of Hawaii, whose business and mailing address is 25 Aupuni Street, Hilo, Hawaii
96720.

LEGAL REFERENCE:

Sections 171-95(a)(5) and 264-2, Hawaii Revised Statutes, as amended.

LOCATION:

Former Road Right-of-Way situated in Kailua-Kona, North Kona, Hawaii, identified by
Tax Map Key: 3rd/ 7-5-22:175, containing an area of 7,739 square feet, as shown on the
attached map labeled Exhibit A.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: CV-7.5

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered; paper road (laid out).

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 11, 2007

- D-7

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CONSIDERATION:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Pursuant to Section 264-2, HRS, the ownership of all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the county for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title.

Act 288, SLH 1993, stated in its preamble "In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, HRS, without the necessity of conveyance documents transferring title from the State to the respective counties, except when required for the purpose of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation (i.e., quitclaim deeds) be issued on roads owned by the counties under Section 264-2, HRS, only when the county is going to subsequently dispose of any real property interests (fee conveyance or any interests less than fee) in at least a portion of the road to a third party. In all other cases, the State's position is that the fee simple interest in the road was passed to the counties by operation of law and documentation is unnecessary. This policy provides for the chain of title and enables subsequent real estate transactions to occur. This policy should not be misconstrued to mean or imply that the State does not assert that the roads being quitclaimed are already owned by the applicable county.

Notwithstanding the foregoing, title to this remnant is clouded by the fact that it was conveyed from a private party to the Territory of Hawaii during a period that the County's could not accept title to roads prior Section 264-2, HRS. In connection with new County roads on State land, it has always been the Board's practice to convey fee title to the

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County to avoid liability issues.

The subject right-of-way remnant was created with the adjacent subdivision and related roadways in the 1950s. At that time, although the Counties approved subdivisions, the Territory of Hawaii was the only legal entity that could receive conveyance of roads. For some reason, this remnant area was created as part of the County approved subdivision roadways, not constructed and conveyed by a separate document to the Territory of Hawaii. By way of a separate conveyance document, the remainder of subdivision roadways that were constructed was conveyed to the Territory of Hawaii and now under the ownership and jurisdiction of the County. Staff's only assumption can be that this undeveloped portion of the road may have been viewed as a future connection and although the developer did not construct it at the time of the original development, he was asked to convey the remnant parcel as he did with the other developed roads.

Due to the conveyance to the Territory of Hawaii, the County previously denied any interest in the road. At its meeting held on November 4, 1983, Item F-1-h, the Board approved the issuance of Revocable Permit No. S-6069 to Kona Investment Centre Associates for landscaping purposes. Kona Investment Centre Associates was concerned about enhancing the visual appearance of the major highway intersection as they constructed their new office building abutting the subject parcel. However, increases in rent led them to cancel this permit in 1993.

In connection with the installation of sewer lines within the same subdivision area mauka of the subject parcel, a County owned sewer line was installed within this subject remnant but the easement was never completed.

By letter dated November 30, 2001, the County of Hawaii, Department of Public Works, requested a construction right-of-entry on subject parcel to construct a temporary access road linking Kalawa Street to Hualalai Road, under Federal Project No. STP-0110(1). The purpose of the temporary access road was intended to help alleviate existing traffic in the area until the Kuakini Highway Improvement Project was completed. By letter dated November 5, 2004, the County of Hawaii, Department of Public Works, requested a term extension of its construction right-of-entry which expired on November 8, 2006. Under the conditions specified in this right-of-entry, upon completion of the Kuakini Highway Improvement Project, the access roadway will be removed and the land restored to its original condition. The County is now considering developing a permanent connection between Kalawa Street and Hualalai Street that would probably require a conveyance of a portion of the remnant to the County.

The County's Treasury Division is temporarily leasing office space in the adjacent building and previously requested a revocable permit to use the portions of the remnant area for employee parking. Staff worked on a submittal for a revocable permit, however, reconsidered its approach given all of the foregoing circumstances. The remnant was originally created by a County approved subdivision action that also created all of the existing developed roads now owned and managed by the County. These existing

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developed roads were also never conveyed by way of any document and so staff feels that there is an argument that this remnant is also owned by the County.

Given all of the foregoing situations, the State would have to issue a sewer line easement to the County, a revocable permit for parking and if the County decided to permanently extend Kalawa Street, would have to require a subdivision of the remnant and convey a portion to the County for the development of that extension. All of this within a remnant that could already be considered as County owned.

If a portion of this remnant will eventually become an extension of Kalawa Street, it has been the practice of the State of Hawaii to convey all roads in fee. For the foregoing reason, staff is recommending that the Board approve a quitclaim of the remnant to the County of Hawaii.

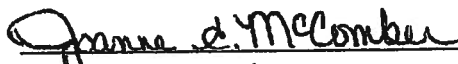
The standard State and County governmental agencies, including the Office of Hawaiian Affairs, were solicited for comments with no objections or no comments received.

RECOMMENDATION:

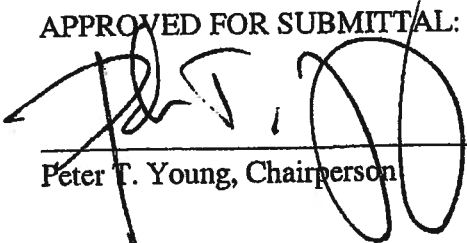
That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the quitclaim of interests, if any, the State may have in the subject roadway parcel to the County of Hawaii covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current quitclaim deed (roads) form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Joanne E. McComber
Land Agent

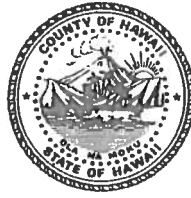
APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

May 11, 2007



William P. Keno
Mayor



Nancy E. Crawford
Director

Deanna S. Sako
Deputy Director

County of Hawaii**Finance Department**

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RECEIVED
LAND DIVISION
HAWAII

February 25, 2010

Mr. Gordon C. Heit
Land Agent
Department of Land and Natural Resources, Land Division
75 Aupuni Street, Room 204
Hilo, Hawai'i 96720

Dear Mr. Heit:

Re: Reference Number 06HD-234
Quitclaim of State's Interest in Former Right-of-Way to the County of Hawai'i
TMK (3) 7-5-022:175; Kailua-Kona, North Kona, Hawai'i

This responds to your letter dated February 18, 2010 regarding the County of Hawai'i's intent to pursue the quitclaim of the State's interest in the above referenced parcel. Please rescind our request for the quitclaim as the County no longer wishes to pursue this acquisition.

If you have any questions, please feel free to contact Daryl Inaba at 961-8567.

Yours truly,

Nancy E. Crawford
Nancy E. Crawford
Finance Director

cc: Warren Lee, Dept. of Public Works